cations similar; the claims of the first patent covered one function of a combination, those of the second patent another function of the same combination. The Supreme Court in an opinion delivered by Mr. Justice Jackson held that the entire invention was disclosed by the first patent, and the second patent was void for lack of novelty.

The injustice of a decision which deprives an inventor of the fruits of his genius on account of delay by the Patent Office has been generally recognized. In the case first cited Judge Townsend refused to follow *Miller* v. *Eagle Mfg. Co.* The patent in suit was the one covering the overhead trolley system of electric railways which has gone into such general use in this country. The inventor filed an application covering the invention broadly, and while this was pending he took out a patent for a special form of trolley. The broad patent granted afterward was attacked for lack of novelty, but the court upheld it. The patents covered different devices so that the precise question of the *Miller* case did not arise, but the opinion is interesting as showing a tendency to restrict the scope of that decision. A similar decision was reached by Judge Coxe in *Thomson-Houston Co.* v. *E. & H. Ry. Co.*, 69 Fed. Rep. 257, which involved the same patent.

In the following cases *Miller* v. *Eagle Mfg. Co.* was distinguished or cited for a narrow doctrine: *Gamewell Co.* v. *Signal Co.*, 61 Fed. Rep. 948; *U. S.* v. *Bell Tel. Co.*, 65 Fed. Rep. 86; *Reynolds* v. *Paint Co.*, 68 Fed. Rep. 483; *Bell Tel. Co.* v. *U. S.*, 68 Fed. Rep. 542. The case has been followed only once, in *Fasset* v. *Ewart Mfg. Co.*, 62 Fed. Rep. 404, where the facts were similar, and there was the additional circumstance that the inventor attempted by the second patent to prolong his monopoly.

On the whole it may be said that the case will be followed only when the facts are similar or when the inventor has not acted in good faith, and that no attempt to extend the scope of the doctrine will be favored by the courts. This view is supported by the opinion of the Court of Appeals for the Second Circuit in *Thomson-Houston Co.* v. *E. & H. Ry. Co.*, 71 Fed. Rep. 396, on appeal from the decision of Judge Coxe. The court, Wallace, J., at p. 405, says: "Some observations in *Miller* v. *Mfg. Co.* seem to have created some misapprehension of the scope of that decision on the part of the profession, but the principles enunciated in the opinion are so plainly stated that those observations when considered in their application to the case before the court, ought not to be misconceived. The court decided in that case that the two patents . . . were in fact for the same invention, and consequently the later patent was void." This is the latest expression of opinion on the subject, and, coming from such a high authority, may be taken as conclusive.

A MODIFICATION OF LAWRENCE *v.* FOX — BANK CHECKS. — That inconsistencies are pretty sure to follow when courts adopt a rule fundamentally wrong in principle is well illustrated by the difficulties which are being experienced by those courts which have adopted the rule of *Lawrence* v. *Fox* (20 N. Y. 268), namely, that a promise by A. to B. to meet B.'s debt to C. will support an action by C. against A., although C. was not a party to the contract. Such an action would not have been tolerated by the old common law, but the doctrine has gained a foothold in many of our jurisdictions. (See 8 HARVARD LAW REVIEW, 93; 9 HAR-

VARD LAW REVIEW, 233. Among the States which apply this rule there are some, including New York itself, which hold that a promise by a bank to its depositor that it will pay the depositor's debts to third persons (check-holders) will not support an action by the check-holders against the bank. It is hard to see how the cases can be reconciled on any principle, but as there is no common law principle at the bottom of the rule in *Lawrence* v. *Fox*, the inconsistency may presumably be treated as a determination on the part of those courts to narrow the scope of the rule, and not to apply it where the third party is merely one of an undetermined class of the promisee's creditors, instead of being a single creditor definitely named by the contracting parties.

The New York court in *Ætna Bank* v. *Fourth Bank* (46 N. Y. 82, 87) endeavored to distinguish the cases as follows: "*Lawrence* v. *Fox* was upon an express promise to pay a sum of money, received by the defendant from a debtor of the plaintiff, to the plaintiff; and the promise was the consideration upon which, and upon which alone, he received the money. . . . Here the defendant was a debtor upon a general banker's account; there was no special loan on an express promise to pay the plaintiff." In New Jersey this inconsistency exists (*Huyler's Executors* v. *Atwood*, 26 N. J. Eq. 504; *Creveling* v. *Bloomsbury Bank*, 46 N. J. Law, 255); and in Pennsylvania also (*Merriman* v. *Moore*, 90 Pa. St. 78; *First Bank* v. *Shoemaker*, 117 Pa. St. 94); but in the latter State they allow a suit if the check is for the whole amount of the deposit (*Saylor* v. *Bushong*, 100 Pa. St. 23), on the theory that such a check is an assignment of the funds in the bank, — an objectionable doctrine, it would seem, when it is remembered that a bank, instead of holding any specific funds of the depositor, is merely his debtor, and that a check is an order to pay, in the nature of an unaccepted bill of exchange. In Maryland and Michigan, states which follow *Lawrence* v. *Fox*, the courts seem to deny the right of a check-holder to sue the bank, although the point does not appear to have been directly adjudicated. (*O'Neal* v. *School Commissioners*, 27 Md. 227; *Moses* v. *Franklin Bank*, 34 Md. 574; *Crawford* v. *Edwards*, 33 Mich. 354; *Brennan* v. *Merchants' Bank*, 62 Mich. 343.) Perhaps the most interesting example of this inconsistency is in Colorado. In *Lehow* v. *Simonton* (3 Colo. 346), a third party, to whom the money was by the contract to be paid, was allowed to sue on the contract; but in *Boettcher* v. *Colorado Bank* (15 Colo. 16), a suit by a check-holder against the bank was decided in favor of the bank; one judge, however, feeling himself bound by *Lehow* v. *Simonton*, dissented, on the ground that the cases were indistinguishable.

A number of authorities on this point are cited in a recent and carefully considered case in Ohio (*Cincinnati H. & D. R. R. Co.* v. *Metropolitan Bank*, 42 N. E. Rep. 700), which holds that the check-holder has no right of action against the bank for refusal to pay the check.

CONVERSION BY A PLEDGEE. — Two recent cases, *Waring* v. *Gaskill*, 22 S. E. Rep. 659 (Ga.), and *Richardson* v. *Ashby*, 33 S. W. Rep. 806 (Mo.), are authority for the proposition that where a pledgee tortiously sells his pledge, or repledges it for a greater sum than the debt for which it is security, the pledgor has an immediate right to bring an action in trover without tendering the amount of his indebtedness. What little law